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May 17, 2000

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via Hand Delivery

Magalie Roman Salas, Secretary  
Office of The Secretary  
Office of Managing Director  
Federal Communications Commission  
445 Twelfth Street, SW, TWA325  
Washington, DC 20554

Re: **Ex Parte Presentation of Bachow/Coastel,  
L.L.C., WT Docket No. 97-112, CC Docket No. 90-6**

Dear Ms. Salas:

Bachow/Coastel, L.L.C. ("Bachow/Coastel"), pursuant to section 1.1206(b)(2) of the Commission's rules,<sup>1</sup> and by its attorneys, herewith files with the Commission an original and one copy of its summary of its *ex parte* presentation at the Commission on Tuesday, May 16, 2000, and the paper handout from that meeting. On that date, Bachow/Coastel Vice President of Operations, Robert Ivanoff, along with Bachow/Coastel's counsel, Steven J. Hamrick, Esq. of Fleischman and Walsh, L.L.P., met with Michael A. Ferrante, Esq. and Ms. Davida Grant of the Wireless Telecommunications Bureau. Bachow/Coastel is filing two additional copies of this summary with the Commission due to the second docket number attached to this proceeding.

In this meeting, Bachow/Coastel stated that the primary reason for the Commission's proposed rules in its Second Further Notice of Proposed Rulemaking ("Second FNPRM"), which is to provide reliable cellular service in the coastal areas of the Gulf of Mexico,<sup>2</sup> is no longer at

<sup>1</sup> 47 C.F.R. § 1.1206(b).

<sup>2</sup> See Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, 65 Fed. Reg. 24168-24169 (April 25, 2000).

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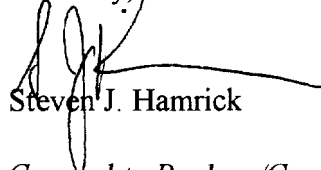
Magalie Roman Salas  
May 17, 2000  
Page -2-

issue, because licensees currently provide reliable cellular service in those geographic areas. The Gulf of Mexico, and most certainly the area proposed to be the Coastal Zone in the Second FNPRM's proposed rules, is covered by Bachow/Coastel's service contours. Bachow/Coastel also cited serious legal issues raised by the Second FNPRM's proposed rules, which do not address the mandate of the United States Court of Appeals for the District of Columbia Circuit's ("D.C. Circuit") decision in *Petroleum Communications, Inc. v. Federal Communications Commission*, 22 F.3d 1164 (D.C. Cir. 1994) ("*Petroleum*"), namely: that limiting Gulf licensees to areas of actual reliable service was arbitrary and capricious; to not apply the same licensing standards to both Gulf-based licensees and land-based licensees without explaining why the Commission would suddenly deviate from its longstanding policy of treating Gulf carriers differently than land-based carriers; and take into consideration the unique nature of operations for Gulf-based licensees. The adoption of the rules proposed in the Second FNPRM raises serious legal questions; indeed, a continuation of this rulemaking proceeding will likely lead to litigation.

Bachow/Coastel noted that the current Commission rules are effectively dealing with carrier problems in the Gulf of Mexico, and are spurring the expansion of coverage throughout the Gulf of Mexico. Bachow/Coastel also recounted how the presence of the Second FNPRM stymied negotiations with land-based licensees for extension agreements and settlement agreements. Finally, Bachow/Coastel raised the possibility of the Commission conducting its own fact-finding study to determine whether there are service reliability issues along the Gulf Coast, and the possibility that the Commission might form two industry working groups to provide recommendations to the Commission (one group would include licensees with Florida coast license areas, and the other group would deal with the remaining Gulf coastal areas).

Mr. Ferrante and Ms. Grant requested that Bachow/Coastel send a coverage map to them. Bachow/Coastel is filing a cellular service coverage marketing map with each of them today, and is contemporaneously attaching a copy of the map to this filing for inclusion in the public record. If you have any questions concerning this filing, or if you require additional information, please do not hesitate to call.

Cordially,



Steven J. Hamrick

*Counsel to Bachow/Coastel, L.L.C.*

Attach.

*Proposed Rulemaking, Cellular Services  
and Other Commercial Radio Services  
in the Gulf of Mexico*  
(WT Docket No. 97-112)

**May 16, 2000**

**Bachow/Coastel, LLC**

# Review of the History of Proposed Rulemakings

• Timetable

• Unreserved Area Rulemaking for the  
Gulf of Mexico

January 1993

• Third Circuit Court of Appeals  
Decision

May 1994

• Further Proposed Rulemaking

March 1997

• Further Proposed Rulemaking

April 2000

- **The underlying premise for the proposed rulemaking has resolved itself over the past 7 years.**

# Contrary to the rulemaking's upfront conclusion...

The public is currently receiving reliable service in coastal areas

- The Gulf carriers have economic incentive to provide quality service in high traffic areas
- No benefit to warehouse spectrum
- Bachow/Coastel has nearly doubled the number of cell sites in 3 years
- 3 A-band land based carriers have implemented land based co-location systems
- If there is no significant issue, why have rulemaking for rulemaking's sake?

There are more efficient methods  
to address this issue

• This is not an industry-wide issue

• There are only 12 carriers are the real  
parties of interest

• The Bureau has not attempted to negotiate  
or mediate a compromise in 7 years

• The current rules provide opportunities to  
address temporary service deficiencies

- STA (Special Temporary Authorizations)
- IOA (Interim Operating Authority)

The proposed rules raise serious legal concerns to the Gulf Carriers

The proposed rules do not address the court's reminder

The proposed rules improperly modify the Gulf carriers' licensed territory

• An extended rulemaking process will likely result in the same parties seeking court intervention and is a waste of resources

# The Florida Coast is a unique situation

There are no oil/gas platforms off the Florida Coast... Presidential proclamation

There are regulatory measures under existing rules which result in reliable coverage all along the Florida Coast

- STA
- de minimis Extensions

- Florida Coast only involves a total of 5 carriers



Permanently required rulemaking to address Gulf Carriers' issues, but proposed rulemaking does not

- Gulf Carriers must continuously deal with interference from land carriers
- Our experiences with GTE over interference complaints has been time consuming, expensive and exposed us to delaying and bullying tactics.

- Effectively, if a Gulf Carrier loses a platform (or a lease) it automatically is stripped of coverage area

Command required rulemaking to address Gulf Carriers' issues, but proposed rulemaking does not  
(continued)

• SAB contour formulae rules benefit the land carriers

• Difference in received antenna height  
• Current SAB rules produce unequal signal at the border

- The proposed rules do not solve the inequity, but actually perpetuate the inequity into the Exclusive Zone

# Recommended Action

- Form two different Industry Working Groups to provide recommendations to the

FCC

Florida Coast

• Carriers with Florida Coast territory

- Remaining Gulf Coast Areas
- Initiate FCC staff fact-finding to determine whether there are cellular issues along the Gulf Coastline

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12<sup>th</sup> Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

*One map.*